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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,780	08/30/2001	Kevin P. Baker	P2548P1C10	2570

7590 05/05/2009

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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED: 05/05/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 09/943,780	<b>Applicant(s)</b> BAKER ET AL.	
	<b>Examiner</b> David J. Blanchard	<b>Art Unit</b> 1643	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 09 April 2009 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/David J Blanchard/  
Primary Examiner, Art Unit 1643

Continuation of 10. Other (including any explanation in support of the above items): Appellant indicates in the Brief that there are no Related Appeals and Interferences, except for the PRO357 application claiming the corresponding nucleic acids and issued as US Patent 6,908,993 on 6/21/2005. In contrast, the Examiner is aware that there are appeals which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal (i.e., other polypeptide cases dependent solely on a positive gene amplification assay using nucleic acids). The Examiner does not know these application numbers. Appellant is required to submit "a statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal." Note MPEP 1205.02 makes clear that "the statement is not limited to copending applications". See also 37 CFR 41.37(c) and MPEP 1205.

Importantly, the Examiner is aware of at least one polypeptide case dependent solely on a positive gene amplification assay using nucleic acids in which the Board has rendered a decision (e.g., USSN 09/904,766, Appeal No. 2008-4086). MPEP 1205.02(ii) states: "Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by 37 CFR 41.37(c)(1)(x).